

# SENATE RECORD VOTE ANALYSIS

105th Congress  
1st Session

Vote No. 36

April 10, 1997, 11:41 am  
Page S-2962 Temp. Record

## NUCLEAR WASTE/Governor Veto of Interstate Transport

**SUBJECT:** Nuclear Waste Policy Act of 1997 . . . S. 104. Murkowski motion to table the Reid/Bryan modified amendment No. 28 to the Thurmond/Hollings amendment No. 27 to the Murkowski substitute amendment No. 26.

### ACTION: MOTION TO TABLE AGREED TO, 72-24

**SYNOPSIS:** As reported, S. 104, the Nuclear Waste Policy Act of 1997, will set deadlines for the Department of Energy to meet its contractual obligations to accept and to store at a single permanent repository the nuclear waste generated by the commercial nuclear power industry; that site will also be used to store all Federal nuclear waste. Congress has selected Yucca Mountain, Nevada, as the site to be considered for the permanent repository. If the President decides that site is unsuitable, a timetable for selecting an interim central storage site will be followed; the Nevada Test Site will be selected as the interim site if another interim site is not agreed upon by the President and Congress (the Nevada Test Site is commonly referred to as being at Yucca Mountain because it is on immediately adjacent land, and both sites are federally owned). If Yucca Mountain is approved for a permanent repository, an interim repository will be built at the Nevada Test Site.

The Murkowski substitute amendment would make several compromise changes. Those changes include: lowering the permitted tonnage capacity for an interim storage facility; delaying the construction and operation dates; authorizing the Environmental Protection Agency to be involved in setting the radiation protection standard; requiring the Environmental Impact Statement for the repository to include a generic analysis of the impacts from transporting used fuel to the storage facility; allowing preemption of State and local laws only if State intransigence prevented a Federal purpose; changing the user fee modifications; and striking the provision stating that existing legal rights will be protected and inserting in lieu thereof that it is the sense of Congress that legal disputes on nuclear waste should be settled.

The Thurmond/Hollings amendment would exempt both the Savannah River Site in South Carolina and Barnwell County, South Carolina, from consideration as the location for an interim nuclear waste storage site.

**The Reid/Bryan modified amendment** would add that no transportation through a State of nuclear waste to a repository

(See other side)

YEAS (72)			NAYS (24)		NOT VOTING (4)	
Republicans (52 or 96%)		Democrats (20 or 48%)	Republicans (2 or 4%)	Democrats (22 or 52%)	Republicans (1)	Democrats (3)
Abraham	Hutchison	Akaka	Campbell	Baucus	Grams- <sup>2</sup>	Conrad- <sup>2</sup>
Allard	Inhofe	Biden	Coats	Boxer		Dorgan- <sup>2</sup>
Ashcroft	Jeffords	Bingaman		Breaux		Wellstone- <sup>2</sup>
Bennett	Kempthorne	Bumpers		Bryan		
Bond	Kyl	Byrd		Cleland		
Brownback	Lott	Dodd		Daschle		
Burns	Lugar	Graham		Durbin		
Chafee	Mack	Hollings		Feingold		
Cochran	McCain	Johnson		Feinstein		
Collins	McConnell	Kennedy		Ford		
Coverdell	Murkowski	Kerry		Glenn		
Craig	Nickles	Kohl		Harkin		
D'Amato	Roberts	Lautenberg		Inouye		
DeWine	Roth	Leahy		Kerrey		
Domenici	Santorum	Levin		Landrieu		
Enzi	Sessions	Lieberman		Mikulski		
Faircloth	Shelby	Moseley-Braun		Moynihan		
Frist	Smith, Bob	Murray		Reed		
Gorton	Smith, Gordon	Robb		Reid		
Gramm	Snowe	Torricelli		Rockefeller		
Grassley	Specter			Sarbanes		
Gregg	Stevens			Wyden		
Hagel	Thomas					
Hatch	Thompson					
Helms	Thurmond					
Hutchinson	Warner					

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

authorized by this Act would be allowed without the express written consent of that State's Governor.

Debate was limited by unanimous consent. After debate, Senator Murkowski moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

The Reid/Bryan amendment is based on the supposed danger of transporting high-level nuclear waste and on a spurious States' rights argument. Based on these two weak arguments, our colleagues have said that we should give each Governor the absolute right to block any shipment of nuclear waste through his or her State. That solution to a non-existent problem would result in Governors making political decisions to block waste shipments, and would effectively block all such shipments.

High-level nuclear waste is in 41 States, it is in 80 locations, it is in highly populated areas, it is in temporary storage facilities that were not designed for permanent storage, and it is in storage facilities that are full or nearly full. The country as a whole has an interest in moving that nuclear waste to a single, safe, remote site. Of necessity, because nuclear waste is in nearly every State, it is going to have to be moved across nearly every State's boundary. Experience, research, and testing prove that doing so will not pose any real risk. Between 1979 and 1995 high-level nuclear waste has been moved 2,400 times in containers subject to State and Federal law. Accidents involving the vehicles carrying that waste have not resulted in any spills of radioactive materials. The reason is that extremely strong containers have been developed for nuclear materials. Sandia National Laboratories conducted approximately 1,500 tests on the casks designed for moving nuclear waste and concluded that no possible transportation accident, no matter how severe, could cause their rupture. Currently, most of the commercial nuclear waste is in solid form, submerged in cooling ponds of water. It is certainly no safer to leave nuclear waste in swimming pools around the country than it is to put them in transportation casks made to withstand the most violent collisions imaginable. Our colleagues' contention that a threat is posed by the transportation of nuclear waste is simply not true.

It is also not true that this bill overruns the right of States to place conditions on the movement of nuclear waste across their borders. Under current law, and under this bill, they are allowed to set conditions. The one thing that States cannot do under current law, cannot do under this bill, and cannot do constitutionally, is prohibit the movement of nuclear waste across their borders. Our country was balkanized and almost fell apart when it was bound together as a confederation in large part because States were able to restrict the interstate movement of materials. Consequently, the Constitution clearly gives Congress the sole right to regulate commerce. A single State may not shut its borders to the rest of the United States.

If this amendment were to pass the result would be that Governors of States through which large amounts of waste would have to be moved would come under huge political pressure to block that movement out of a mistaken belief in the danger of transporting nuclear waste. They would not need a good reason, bad reason, or any reason under the amendment--they could simply refuse. Nuclear waste would then remain scattered across the country, in storage sites that were built to store waste temporarily, and often in very highly populated areas.

In summary, the safety and States' rights arguments in favor of this amendment are invalid. Nuclear waste can be and has been transported safely, and States do not have the constitutional right to block national interests by shutting their borders. The arguments in favor of this amendment aside, its effect would be to kill this bill by making it impossible to transport nuclear waste. We oppose that result, and thus strongly urge our colleagues to join us in tabling this amendment.

**Those opposing** the motion to table contended:

In the past few years it has become fashionable in the Senate to champion States' rights. Republicans especially have fought for those rights. We are not criticizing this interest in reducing Federal encroachment on State prerogatives; many of us share that interest, in kind if not in degree. Ironically, though, we now find ourselves siding with the States against the very Senators who are usually their most ardent defenders. This bill obviously picks on Nevada. However, Nevada is not the only State that will lose its rights under this bill. Other States will also have to bow to this new Federal law. Whether they like it or not, nuclear waste will be moved through them on the way to Nevada. We do not see how any Senator can say that he or she supports States' rights, and then vote for a bill that will require States to allow the most toxic, radioactive substances on earth to be moved across them. The sensible solution would be to give each Governor the right to decide under what conditions nuclear waste could be moved through his or her State. Frankly, we doubt that the American people will allow any of this nuclear waste to be moved. They will probably act like the German citizens who mounted massive protests against a recent movement of nuclear waste by the German Government. Certainly opposition is going to be stronger in some States than in others; each Governor knows better how his or her citizens will respond, and should thus have the right to say if and how nuclear waste may be transferred. The Reid/Bryan amendment is not about restoring States' rights for Nevada; it is about restoring them for all the States. This amendment should not be tabled.